

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CARL E. GAY,

Plaintiff,

-against-

**AECOM ENERGY &
CONSTRUCTION, INC., F/K/A URS
ENERGY & CONSTRUCTION, INC.,
F/K/A CATALYTIC CONSTRUCTION
COMPANY, *et al.*,**

Defendants.

W.D. PA. No.: 2:19-CV-01311-WSS

ASBESTOS CASE

ANSWER TO PLAINTIFF'S COMPLAINT
WITH AFFIRMATIVE DEFENSES, CROSSCLAIMS, AND ANSWERS TO
CROSSCLAIMS OF AECOM ENERGY & CONSTRUCTION, INC., F/K/A URS
ENERGY & CONSTRUCTION, INC., F/K/A CATALYTIC CONSTRUCTION
COMPANY

Defendant AECOM ENERGY & CONSTRUCTION, INC., F/K/A URS ENERGY & CONSTRUCTION, INC., f/k/a Catalytic Construction Company (hereafter “Catalytic” or “Answering Defendant”), by and through its attorneys, Wilbraham, Lawler & Buba, P.C., files this Answer to Plaintiff’s Complaint. Answering Defendant generally denies each and every allegation in Plaintiff’s Complaint (“Complaint”) and denies that it is liable to Plaintiff on any basis whatsoever, because said allegations constitute a disputed issue of fact and/or contain a conclusion of law which require no responsive pleading and/or do not contain sufficient factual information to allow Answering Defendant to responsively plead. Furthermore, Answering Defendant files this Answer in order to comply with this Court’s procedures and this is not a waiver of any grounds or defenses to be pled in future pleadings and motions. With respect to the allegations in the Complaint filed in the above-captioned action, Answering Defendant pleads as follows:

COUNT I

STRICT PRODUCTS LIABILITY

1. Denied. Defendant is without knowledge or information sufficient to form a belief as to truth of the allegations and leaves the plaintiff(s) to their proofs.
- 2-161. Denied. Answering defendant denies all allegations, refers all questions of law to the Court, and demands that plaintiff(s) prove the truth of these allegations at trial. As for the allegations concerning the other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.
162. Denied. Answering defendant denies all allegations, refers all questions of law to the Court, and demands that plaintiff(s) prove the truth of these allegations at trial. As for the allegations concerning the other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.
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167. Denied. Answering defendant denies all allegations, refers all questions of law to the Court, and demands that plaintiff(s) prove the truth of these allegations at trial. As for the allegations concerning the other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.
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170. Denied. Answering defendant denies all allegations, refers all questions of law to the Court, and demands that plaintiff(s) prove the truth of these allegations at trial.
171. (a-g) Denied. Answering defendant denies all allegations, refers all questions of law to the Court, and demands that plaintiff(s) prove the truth of these allegations at trial.

WHEREFORE, Defendant Catalytic hereby demands judgment and costs in its favor and against plaintiff and requests dismissal of the Complaint and cross-claims with prejudice.

COUNT II

NEGLIGENCE

172. Answering defendant repeats each and every answer to the prior allegations of this Complaint.

173. Denied. Answering defendant denies all allegations, refers all questions of law to the Court, and demands that plaintiff(s) prove the truth of these allegations at trial. As for the allegations concerning the other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.
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177. (a-e) Denied. Answering defendant denies all allegations, refers all questions of law to the Court, and demands that plaintiff(s) prove the truth of these allegations at trial. As for the allegations concerning the other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.
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193. (a-g) Denied. Answering defendant denies all allegations, refers all questions of law to the Court, and demands that plaintiff(s) prove the truth of these allegations at trial. As for the allegations concerning the other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

WHEREFORE, Defendant Catalytic hereby demands judgment and costs in its favor and against plaintiff and requests dismissal of the Complaint and cross-claims with prejudice.

COUNT III

AGAINST METROPOLITAN LIFE

194. Answering defendant repeats each and every answer to the prior allegations of this Complaint.
195. Denied. Answering defendant denies all allegations, refers all questions of law to the Court, and demands that plaintiff(s) prove the truth of these allegations at trial. As for the allegations concerning the other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.
196. Denied. Answering defendant denies all allegations, refers all questions of law to the Court, and demands that plaintiff(s) prove the truth of these allegations at trial. As for the allegations concerning the other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.
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WHEREFORE, Defendant Catalytic hereby demands judgment and costs in its favor and against plaintiff and requests dismissal of the Complaint and cross-claims with prejudice.

COUNT IV

AGAINST METROPOLITAN LIFE

199. Answering defendant repeats each and every answer to the prior allegations of this Complaint.
200. Denied. Answering defendant denies all allegations, refers all questions of law to the Court, and demands that plaintiff(s) prove the truth of these allegations at trial. As for the allegations concerning the other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.
201. Denied. Answering defendant denies all allegations, refers all questions of law to the Court, and demands that plaintiff(s) prove the truth of these allegations at trial. As for the allegations concerning the other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.
202. (a-j) Denied. Answering defendant denies all allegations, refers all questions of law to the Court, and demands that plaintiff(s) prove the truth of these allegations at trial. As for the allegations concerning the other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.
203. (a-c) Denied. Answering defendant denies all allegations, refers all questions of law to the Court, and demands that plaintiff(s) prove the truth of these allegations at trial. As for the allegations concerning the other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.
204. Denied. Answering defendant denies all allegations, refers all questions of law to the Court, and demands that plaintiff(s) prove the truth of these allegations at trial. As for the

allegations concerning the other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

205. Denied. Answering defendant denies all allegations, refers all questions of law to the Court, and demands that plaintiff(s) prove the truth of these allegations at trial. As for the allegations concerning the other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

206. Denied. Answering defendant denies all allegations, refers all questions of law to the Court, and demands that plaintiff(s) prove the truth of these allegations at trial. As for the allegations concerning the other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

WHEREFORE, Defendant Catalytic hereby demands judgment and costs in its favor and against plaintiff and requests dismissal of the Complaint and cross-claims with prejudice.

COUNT V

AIDING AND ABETTING AGAINST METROPOLITAN LIFE

207. Answering defendant repeats each and every answer to the prior allegations of this Complaint.

208. Denied. Answering defendant denies all allegations, refers all questions of law to the Court, and demands that plaintiff(s) prove the truth of these allegations at trial. As for the allegations concerning the other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

209. Denied. Answering defendant denies all allegations, refers all questions of law to the Court, and demands that plaintiff(s) prove the truth of these allegations at trial. As for the

allegations concerning the other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

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212. Denied. Answering defendant denies all allegations, refers all questions of law to the Court, and demands that plaintiff(s) prove the truth of these allegations at trial. As for the allegations concerning the other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

WHEREFORE, Defendant Catalytic hereby demands judgment and costs in its favor and against plaintiff and requests dismissal of the Complaint and cross-claims with prejudice.

COUNT VI

MISREPRESENTATION AGAINST METROPOLITAN LIFE INSURANCE COMPANY

213. Answering defendant repeats each and every answer to the prior allegations of this Complaint.

214. Denied. Answering defendant denies all allegations, refers all questions of law to the Court, and demands that plaintiff(s) prove the truth of these allegations at trial. As for the

allegations concerning the other defendants, this defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations.

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WHEREFORE, Defendant Catalytic hereby demands judgment and costs in its favor and against plaintiff and requests dismissal of the Complaint and cross-claims with prejudice.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

This defendant acted reasonably and with due care toward the plaintiff(s) and violated no duty owed to the plaintiff(s).

THIRD AFFIRMATIVE DEFENSE

The injuries and damages complained of were the proximate result of the negligence of third parties over whom this defendant had no control or right of control.

FOURTH AFFIRMATIVE DEFENSE

This defendant denies that it was guilty of any negligence or breach of warranty which directly caused or proximately contributed to plaintiff(s)' alleged damages.

FIFTH AFFIRMATIVE DEFENSE

The alleged injuries and damages were the result of the plaintiff(s)' sole negligence.

SIXTH AFFIRMATIVE DEFENSE

The plaintiff(s)' contributory negligence was greater than the negligence of the answering defendant. In the event that such contributory negligence is adjudged not to be greater than the negligence of answering defendant, the plaintiff(s)' damages shall be diminished by the percentage of plaintiff(s)' contributory negligence.

SEVENTH AFFIRMATIVE DEFENSE

The Court lacks jurisdiction over this defendant.

EIGHTH AFFIRMATIVE DEFENSE

The venue of this action is improper and this defendant reserves the right to move for a transfer.

NINTH AFFIRMATIVE DEFENSE

The Statute of Limitations and/or Statute of Repose bars plaintiff(s)' action, and accordingly, this defendant reserves the right to move for dismissal at or before trial.

TENTH AFFIRMATIVE DEFENSE

This defendant denies breach of any warranties, expressed or implied.

ELEVETH AFFIRMATIVE DEFENSE

The plaintiff(s) had full knowledge of all facts, circumstances and conditions existing with respect to the use of any product mentioned in the Complaint and voluntarily assumed the risk from and attendant to the use of products manufactured or supplied by this defendant.

TWELFTH AFFIRMATIVE DEFENSE

This defendant is not liable to the plaintiff(s) in strict liability in tort.

THIRTEENTH AFFIRMATIVE DEFENSE

The plaintiff(s) consented to the acts alleged in the Complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

Since plaintiff(s)' employers are primarily liable for plaintiff(s)' current injuries and plaintiff(s) brought or have the right to bring an action for workmen's compensation benefits, plaintiff(s)' damages, if any, is barred by the exclusive remedial provisions under the workers' compensation law and other applicable state laws. In the alternative, the damages should at least be reduced by the amount of compensation received from the plaintiff(s)' employers.

FIFTEENTH AFFIRMATIVE DEFENSE

The incident and injuries complained of were caused by unauthorized, unintended and improper use of the products complained of and as a result of plaintiff(s)' failure to exercise reasonable and ordinary care, caution or vigilance.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff(s)' injuries and damages were caused by the superseding and intervening acts or the fault of other parties over whom this defendant had no control and for whose actions this defendant is not liable.

SEVENTEENTH AFFIRMATIVE DEFENSE

The plaintiff(s)' action is barred by the Doctrine of Laches.

EIGHTEENTH AFFIRMATIVE DEFENSE

This defendant never designed, manufactured, sold or distributed a defective product which caused plaintiff(s)' damages.

NINETEENTH AFFIRMATIVE DEFENSE

Inasmuch as the plaintiff(s) are unable to identify the manufacturer of the product that allegedly caused their injuries, plaintiff(s) fail to state a claim upon which relief can be granted. If relief were granted in the absence of product identification, it would contravene with defendant's constitutional rights to substantive and procedural due process of law and equal protection, as well as defendant's constitutional rights to protection against the taking of private property for public use without just compensation as preserved by the Fourteenth Amendment of the United States Constitution.

TWENTIETH AFFIRMATIVE DEFENSE

The applicable provisions of the Uniform Commercial Code bar the alleged claims.

TWENTY-FIRST AFFIRMATIVE DEFENSE

At all times relevant hereto, this defendant followed plans, specifications and contracts set by a governmental body and did not deviate from said plans, contracts and specifications; therefore, its actions are cloaked with immunity.

TWENTY-SECOND AFFIRMATIVE DEFENSE

At all times relevant hereto, this defendant complied with all applicable laws, regulations and standards.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The plaintiff(s)' alleged injuries were caused in whole or in part by the misuse, abuse and/or unauthorized alteration of this defendant or other defendant's products.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

All oral warranties upon which plaintiff(s) allegedly relied are inadmissible and unavailable due to the applicable statute of frauds.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff(s)' claim for punitive damages is barred by the proscription of the Eighth Amendment to the United States Constitution, as applied to the States through the Fourteenth Amendment, prohibiting the imposition of excessive fines, as well as through application of the substantive law of the Allegheny County Court of Common Pleas.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiff(s)' claim for punitive damages is barred by the “double jeopardy” clause of the Fifth Amendment to the United States Constitution, as applied to the States through the Fourteenth Amendment.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

The plaintiff(s)' action is barred by the doctrine of estoppel and waiver.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiff(s)' claim for punitive damages is barred by the Due Process clause of the Fourteenth Amendment to the United States Constitution and by the Commonwealth of Pennsylvania Constitution.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Any benefit or other compensation received by plaintiff(s) from any other defendants or any collateral source, including workers compensation, social security death benefits and/or insurance, should reduce or set off the amount of any judgment against this defendant.

THIRTIETH AFFIRMATIVE DEFENSE

Plaintiff(s) failed to mitigate or reduce his/her alleged injuries.

THIRTY-FIRST AFFIRMATIVE DEFENSE

All causes of action based on expressed or implied warranties are legally insufficient since plaintiff(s) failed to allege privity of contract between plaintiff(s) and answering defendant.

THIRTY-SECOND AFFIRMATIVE DEFENSE

Any asbestos exposure from this defendant's products are so minimal that there is insufficient evidence that this defendant's products caused plaintiff(s)' alleged injuries.

THIRTY-THIRD AFFIRMATIVE DEFENSE

Even if plaintiff(s) can establish a breach of warranty, plaintiff(s) failed to provide prompt and proper notice of said breach of warranty to the answering defendant.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff(s) did not directly or indirectly purchase any asbestos-containing products from this defendant. Therefore, plaintiff(s) neither received nor relied upon any representation or warranty allegedly made regarding this defendant's products.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff(s)' claims are barred by the doctrine of res judicata.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

This Court lacks subject matter jurisdiction over the answering defendant.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

This Court lacks personal jurisdiction over the answering defendant.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiff(s)' Complaint and all claims and cross-claims against answering defendant are barred due to insufficient process.

THIRTY-NINTH AFFIRMATIVE DEFENSE

Plaintiff(s)' Complaint and all claims and cross-claims against answering defendant are barred due to insufficient service of process.

FORTIETH AFFIRMATIVE DEFENSE

This defendant incorporates and adopts all affirmative defenses raised and plead by any other defendants except such defenses which refer to this answering defendant. Additionally, defendant specifically reserves the right to amend this answer and assert any additional defenses that might become available as discovery continues.

WHEREFORE, Defendant Catalytic hereby demands judgment and costs in its favor and against plaintiff(s) and requests dismissal of the Complaint and cross-claims with prejudice.

CROSSCLAIMS

1. This defendant demands contribution, jointly and severally, from all other defendants, potential defendants, and potential third-party defendants.

2. This defendant denies any liability whatsoever to the plaintiff(s) and/or plaintiff(s)' decedent but asserts that if this defendant is in any way found to be liable, such liability is passive, indirect and secondary, and answering defendant hereby demands indemnification from all responsible and liable co-defendants.

WHEREFORE, defendant Catalytic hereby demands judgment in its favor and against all other defendants, potential defendants and potential third-party defendants for contribution and indemnification.

ANSWER TO CROSSCLAIMS

This defendant denies all allegations of all crossclaims asserted against Catalytic which have been filed or hereafter will be filed by any and all co-defendants in this matter.

WHEREFORE, defendant Catalytic hereby demands judgment in its favor and against all other defendants and requests that the Court dismiss all crossclaims filed against this defendant with prejudice.

DEMAND FOR JURY TRIAL

The answering defendant hereby demands a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Jennifer E. Watson, Esquire is hereby designated as trial counsel in this matter.

WHEREFORE, Defendant Aecom Energy & Construction, Inc., f/k/a URS Energy & Construction, Inc., f/k/a Catalytic Construction Company hereby demands judgment and costs in its favor and against plaintiff(s) and requests dismissal of the Complaint and cross-claims with prejudice.

Respectfully submitted,

WILBRAHAM, LAWLER & BUBA

By: /s/ Jennifer E. Watson

Jennifer E. Watson, Esquire (I.D. No. 78664)

603 Stanwix Street Suite 17 North

Pittsburgh, PA 15222

jwatson@wlbdeflaw.com

412-255-0500

Attorney for AECOM ENERGY &
CONSTRUCTION, INC., F/K/A URS ENERGY &
CONSTRUCTION, INC., F/K/A CATALYTIC
CONSTRUCTION COMPANY

Dated: October 31, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served a copy of the above and foregoing by electronic means via the CM/ECF to those registered with the CM/ECF.

By: /s/ Jennifer E. Watson
Jennifer E. Watson, Esquire

Date: October 31, 2019